

CHINA IN PEACEFUL DEVELOPMENT



The Rule of Law in Full Swing in China

■ By Hu Jinguang



FOREIGN LANGUAGES PRESS

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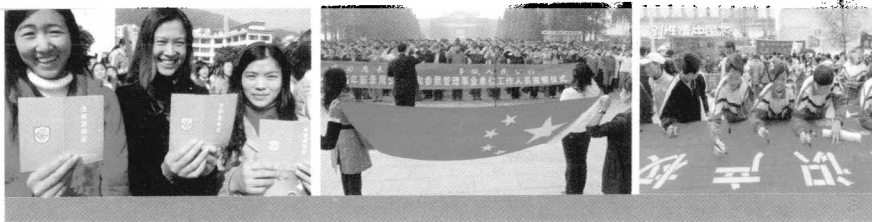
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I

Establishing the Rule of Law as a Fundamental Principle

Rule by man is a political tradition in China. However, the founding of the People's Republic of China (PRC) in 1949 ushered in a new era, which saw the development of the rule of law in China. Nevertheless, it took a rather long time for a proper system of rule of law to emerge. After several intense debates about the “rule by man” and the rule of law, and suffering because of the “rule by man,” China in the 1990s finally established the rule of law as the

fundamental principle for governing the country. The rule of law in the context of China retains its common features together with distinct Chinese characteristics. Now, the supremacy of the Constitution and the law has become a principle of the rule of law in modern China. With this premise, the ruling Communist Party of China (CPC), exercising the governing power, is determined to run the country by law and build it under the rule of law.

Changes in the Principle for Running the Country

The idea of the “rule by man” in China can be traced back to the Spring and Autumn and Warring States periods (770-221 BC). At that time the Confucian school, represented by Confucius, Mencius and Xun Zi, advocated that “virtuous men should run the country” and that “benevolent men should go into politics and rejuvenate the country.” There was also the concept of “rule of law” in ancient China, but it was not the rule of law in the modern sense, but one of instrumentalism, which never dominated ancient Chinese society.

After the first Opium War in 1840 China was gradually reduced to a semi-colonial and semi-feudal society. To lift the country and the Chinese nation out of misery some people with lofty ideals tried to transplant the rule-of-law model in Western countries to China, so as to fulfill the dream of rejuvenating the nation by political reform. But they failed in the end due to various historical reasons.

After the People's Republic was founded in 1949 the government made efforts to improve the legal system by drawing up some laws and regulations. Starting in September 1949, the Common Program of the Chinese People's Political Consultative Conference (CPPCC), as the interim constitution, and other laws and regulations, were proclaimed in succession. These legal documents played an important role in consolidating the new government, maintaining social order and restoring the national economy.

The Constitution of the People's Republic of China, approved at the First Session of the First National People's Congress (NPC) in 1954, and relevant laws made later, contained stipulations on the political and economic systems of China, citizens' rights and freedoms, the establishment, organizational setup, functions and powers of state organs, and the

fundamental principles underlying the national legal system, laying a foundation for China's development of the rule of law. These laws and regulations played a positive role in transforming the old economy, establishing and developing the new economy, and safeguarding and consolidating the people's monopoly of state power.

At that time, the laws were strictly observed and enforced. For example, in 1952 two top-ranking Tianjin officials, Liu Qingshan and Zhang Zishan, were found guilty of embezzlement and sentenced to death, causing a sensation throughout China. The pair had made outstanding contributions in the war years. However, in the peaceful environment of the early 1950s they abused their power, causing huge losses of state property.

However, the Anti-Rightist Campaign, launched in the latter half of 1957, damaged China's legal system for a rather long time, and the "cultural revolution" from May 1966 to October 1976 did even more damage to the socialist legal system. In this period,

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思想为国家政治生活
中的指导思想
- 完善土地征用制度
- 将“国家尊重和保障
人权”写入宪法
- 完善对私有财产保护的
规定
- 完善建立社会主义市场经济
制度的规定
- 增加对非公有制经济的
规定

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- 中华人民共和国宪法
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据宪法修正案修正)

1982年12月4日第十届全国人民代表大会第二次会议通过了《中华人民共和国宪法修正案》，
对1982年通过的《中华人民共和国宪法》进行了第四次修正。此前，全国人民代表大会于1988
年、1993年、1999年先后三次对宪法的部分内容作了修改。为了便于学习和实施宪法，本书将
1982年宪法原文、历次宪法修正案和根据宪法修正案修正的文本汇编出版。

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ultra-leftist thinking gained ground together with legal nihilism, and even the principles of the Constitution and the laws were criticized.

The disaster caused by the “cultural revolution” led the government to understand the harm of “rule by man.” To avoid making the same mistake again, at the Central Working Conference of the CPC held in December 1978 Deng Xiaoping pointed out, “Democracy has to be institutionalized and written into law, so as to make sure that institutions and laws do not change whenever the leadership changes, or whenever the leaders change their views or shift the focus of their attention.” Shortly afterwards, the CPC explicitly stated in the Communiqué of the Third Plenary Session of the 11th Central Committee: “To guarantee the people’s democracy, we must strengthen the socialist legal system, institutionalizing democracy and writing it into law, and ensuring that such institutions and laws are stable, consistent and authoritative. By doing so, we can ensure that there are laws to go by, the laws are observed and strictly enforced, and law breakers are punished.” From then on, legislation work was put on the agenda of the NPC and its Standing Committee. “There are laws to go by, the laws are

observed and strictly enforced, and law breakers are punished.” – This covers the basic contents and requirements of the legislation.

The present Constitution was adopted in 1982, as the fourth one since 1954. In the Preamble, it says, “This Constitution affirms the achievements of the struggles of the Chinese people of all ethnic groups, and defines the basic system and basic tasks of the state in legal form; it is the fundamental law of the state and has supreme legal authority. The people of all ethnic groups, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation.” To emphasize the role of the Constitution in the promotion of the rule in law in socialist China, Article 5 provides, “All state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings must abide by the Constitution and the law. All acts in violation of the Constitution and the law must be investigated. No organization or individual may enjoy the privilege of being above the Constitution and the law.” This article truly displays

the basic spirit of the rule of law.

In late the 20th century the rule of law became a fundamental principle and objective for the Chinese people in running the country. In September 1997 the CPC expounded in the report to its 15th National Congress the idea of “governing the country in accordance with the law and making it a socialist country ruled by law.” It stated, “Ruling the country by law means that the broad masses of the people, under the leadership of the Party and in accordance with the Constitution and the law, participate in one way or another and through all possible channels in managing state affairs, economic and cultural undertakings and social affairs, and see to it that all work of the state proceeds in keeping with law, and that socialist democracy is gradually institutionalized and codified so that such institutions and laws will not change with changes in the leadership or changes in the views or focus of attention of any leader. Ruling the country by law is the basic strategy employed by the Party in leading the people in running the country. It is the objective demand of a socialist market economy, an important hallmark of social and cultural progress, and a vital guarantee for lasting political stability of the country.”



- December 15, 2005 newly appointed officials and legal personnel of Zhengzhou were sworn in before the national emblem, each holding a copy of the Constitution.

In March 1999, the Amendment to the Constitution added one section to Article 5: “The People’s Republic of China practices ruling the country in accordance with the law and building a socialist country of law.”

Connotations of the Rule of Law in China

After New China was founded, the socialist idea of the rule of law came into being in light of the reality of Chinese society and the stage it was at. The socialist concept of law-based governance is a collective of notions, beliefs, ideals and values embodying the inner requirement of building a socialist country under the rule of law, as well as principles for guiding and adjusting the legislation, law enforcement, judiciary, law observance and legal supervision. The basic connotations of the socialist concept of law-based governance can be summarized as follows: ruling the country by law, enforcing the law for the public interest, being fair and just, serving the overall situation, and the leadership of the CPC. The five aspects are interdependent, displaying that the people being masters of the country and ruling the country by law are organically integrated.

First, ruling the country by law is the core. Ruling the country by law means combining socialist democracy with the socialist rule of law, and gradually institutionalizing and codifying democracy, so that the broad masses of the people, in accordance with the

Constitution and the law, participate in one way or another and through all possible channels in managing state affairs, economic and cultural undertakings and social affairs, and see to it that all the work of the state proceeds in keeping with law. To rule the country by law, we must make the Constitution and the law the highest criteria of conduct for all state organs, the armed forces, public organizations and individuals. To rule the country by law, we must guarantee citizens' rights, restrain state organs in the exercise of power and prevent abuse of state power – the core of ruling the country by law; to rule the country by law, we must put in place open and fair procedures and rules to restrain the exercise of state power – the key to carrying out the principle of ruling the country by law in all respects.

Second, enforcing the law for the public interest is an essential requirement. Enforcing the law for the public interests demands that the law-enforcement authorities protect the people's interests while safeguarding the authority of the laws. It demonstrates the Party's purpose and concept of governance, as well as the essence and value orientation of the rule of law in socialist China. To have an idea of enforcing the law for the public interest, we must keep to

the people-oriented principle and have a sense of protecting human rights, abide by the law and enforce the law in a civilized way. The law-enforcement authorities must respect and protect the right of action and other legitimate rights of administrative persons, law offenders, suspects, defendants and victims, and put equal emphasis on safeguarding social order, combating criminal activities and protecting human rights. Enforcing the law for the public interest stresses that all the power of the People's Republic of China belongs to the people – the principle of “sovereignty belonging to the people.”

Third, fairness and justice compose the value criterion. Pursuit of fairness and justice is a progressive value orientation of human society, as well as an important premise and a basic feature of a harmonious socialist society. China regards fairness and justice as an important basis for legislation and institution building, uprooting unfair practices, and setting up a defensive line in law enforcement and judicial activities to ensure fairness and justice. China regards fairness and justice as a basic criterion for coordinating relations among different social strata, and is gradually setting up a system for ensuring social fairness that covers fairness of rights, opportunities, regulations